

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF SAINT CROIX

UNITED STATES OF AMERICA,

Plaintiff,

Crim. No. 2001/37

v.

IVENCIO BELIQUE-EMILIA,

Defendant.

ORDER DENYING DEFENDANT'S MOTION TO DISMISS

THIS MATTER is before the court on defendant's motion to dismiss for improper venue.¹ The government has filed an opposition and the defendant submitted a Reply.

Defendant was discovered aboard a vessel that had traveled from the Dominican Republic to St. Croix. The captain of the vessel claims that he discovered Emilia and another individual on board his vessel while the vessel was located in the Mona Passage, halfway between Rio Haina, Dominican Republic and St. Croix. Defendant was on board the vessel when it docked in St. Croix. He was arrested and charged as a stowaway pursuant to 18 U.S.C. § 2199.

In his motion, defendant claims (1) that he did not intend to come to St. Croix because he thought the vessel was going to Tortola in the British Virgin Islands; and (2) the conduct giving rise to the statutory violation was not consummated in the United States, thus, venue is improper in the division of St. Croix.

¹The parties have filed consent to the Magistrate Judge's jurisdiction herein.

The burden of establishing proper venue rests with the government

U.S. v. Liang, 224 F.3d 1057, 1059 (9th Cir. 2000). To that end, the government relies on the charging statute, Title 18 U.S.C. § 2199, which provides:

“Whoever, without the consent of the owner, charterer, master or person in command of any vessel, or aircraft, with intent to obtain transportation, boards, enters or secrets himself aboard such vessel or aircraft and is thereon at the time of departure of said vessel or aircraft from a port, harbor, wharf, airport or other place within the jurisdiction of the United States; or

“Whoever, with like intent, having boarded, entered or secreted himself aboard a vessel or aircraft at any place within or without the jurisdiction of the United States, remains aboard after the vessel or aircraft has left such place and is thereon at any place within the jurisdiction of the United States”

The government reasons that the offense was not committed until the defendant was discovered aboard the vessel when it arrived on St. Croix. The government argues that, pursuant to Federal Rules of Criminal Procedure 18, venue is proper “in [the] district in which the offense was committed”, i.e., St. Croix.

There are few cases on this precise issue. The government cites *United States v. Menere*, 145 F.Supp. 88 (S.D.N.Y. 1956). In *Menere*, the defendant was caught in New York, with no visa or ticket, after secretly boarding a vessel in London and staying aboard. The New York court found it conclusive that the defendant was aboard the vessel when it docked in New York. Venue was deemed proper in New York where the defendant was arrested.

Here, the defendant also falls within the second paragraph of the statute in that he boarded and remained on the vessel without the consent or knowledge of the owner. It is irrelevant that the defendant thought he was going to Tortola because he satisfied the statute when he boarded the vessel for transportation; and was on the vessel when it docked in St. Croix.

Therefore, he is in violation of the statute and venue is proper in St. Croix, where he was discovered.

Defendant also argues that because he was arrested by the Master, on the high seas, before being brought to St. Croix, the controlling provision is 18 U.S.C. 3238 which, if applied, would place venue in the defendant's last known residence, the Dominican Republic. Title 18 U.S.C. 3238, states:

The trial of all offenses begun or committed upon the high seas, or elsewhere out of the jurisdiction of any particular State or district, shall be in the district in which the offender, or any one of two or more joint offenders, is arrested or is first brought; but if such offender or offenders are not so arrested or brought into any district, an indictment or information may be filed in the district of the last known residence of the offender or of any one of two or more joint offenders, or if no such residence is known the indictment or information may be filed in the District of Columbia.

This statute is not helpful to defendant because he was not "arrested" on the high seas. There was no United States Government action until defendant arrived in St. Croix and was arrested there. The actions of the ship's master are inconsequential with regard thereto. Even if defendant were considered "arrested" by the master on the high seas, § 3238 allows prosecution where defendant is first brought. As noted in *Menere*,

"In the case at bar the crime was consummated when the defendant arrived 'within the jurisdiction of the United States.' His presence in New York was the nexus for jurisdictional purposes. The mere fact that the defendant was apprehended while at sea does not of itself alter his status as a stowaway, . . . nor does it deprive the Court of jurisdiction to entertain this action. The statute applies with equal force to stowaways who are discovered as well as to those who are more resourceful."

145 F.Supp. at 89. [Internal citations omitted].

Defendant's reliance on *Yenkichi Ito v. United States*, 64 F.2d 73 (9th Cir) *cert. denied*

289 U.S. 762 (1933) is misplaced. In *Ito*, the defendants were apprehended by the authorities *while on the high seas*. The *Ito* court found that the statutory requirement of being **in the United States** at the time of commission of the offense had not been established.

Based on the foregoing, this court finds that there is no venue issue presented herein. The plain language of the charging statute requires defendant be tried on St. Croix, where the crime was completed. Accordingly, it is hereby

ORDERED that the defendant's motion to dismiss is DENIED.

DATED: August 22, 2001

ENTER:

JEFFREY L. RESNICK
U.S. MAGISTRATE JUDGE

A T T E S T:
Wilfredo F. Morales, Clerk of Court
by: _____
Deputy Clerk

cc: Andrew Simpson, Esq./Darwin Carr, Esq.
Carl F. Morey, AUSA